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Zoning and Land Use Planning

PATRICIA E. SALKIN*

States Beginning to Recognize that Training is Essential for Members of Planning and Zoning Boards and Local Legislative Bodies

I. Introduction

Members of planning and zoning boards and local legislative bodies constantly make decisions that may be worth millions of dollars to applicants and that may have serious impacts on public health and safety. These board members must perform their duties in accordance with federal and state constitutional provisions, state statutes (and sometimes federal statutes), and locally adopted laws and ordinances. Board members must be careful to

make decisions that do not expose the municipality to liability for all sorts of actions, including civil rights violations. In addition, board members must be mindful to constantly base their decisions on facts and evidence in the record so as not to act in an arbitrary and capricious manner, and they must, at all times, act in accordance with high ethical standards imposed on those in public service. Of course, each of these areas opens potential opportunities for lawsuits that cost municipalities large sums to defend and which cost applicants significant amounts of money in unrealized income plus the expense of litigation.

Unlike other players in the land use decision making process, such as professional planners, code enforcement officers and engineers, members of local legislative bodies and land use boards often have no specific education or training in land use matters prior to their election or appointment. In fact, in most jurisdictions, the only legal requirements to be satisfied prior to running for of-

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fice or seeking an appointment to a planning or zoning board is that the individual be of voting age (18 years) and that they reside in the jurisdiction where they seek to serve. Pressures can be intense, stemming from, for example, community opposition to a particular proposed project. Board members are required, however, to follow procedural and substantive requirements contained in the law. With limited exceptions, once seated on these boards, individuals are not required to participate in formal training programs specifically focused on land use planning and zoning law, putting them in the position to learn solely from “on the job training.”

Published in 2002, the American Planning Association’s Growing Smart Legislative Guidebook is the seminal work on modernizing planning and zoning enabling statutes.¹ In recognition of the need for training, and based on a New Hampshire statute, Chapter 10 of the Guidebook recommends

that states empower localities to require that all new members (as well as alternate members) of land use boards complete at least six hours of training within six months of assuming office.² This training, as recommended by the Guidebook, is to focus on duties as a member of the board.³ The Guidebook stops short of suggesting that state legislatures require such training to occur.⁴ While a wealth of training opportunities may exist on planning and zoning topics across the country at meetings of national, statewide, regional, and locally-based organizations, many local decisionmakers do not routinely attend these workshops. Five (5) states currently require mandatory training and continuing education courses for members of planning boards and zoning boards of appeals, and both houses of the New York State Legislature have just passed a similar measure that is awaiting gubernatorial attention.⁵

¹Stuart Meck, ed., *Growing Smart: Legislative Guidebook*, 2002 ed. (American Planning Association, 2002).

²*Id.* at § 10-404 (pp.10-51 to 10-52).

³*Id.*

⁴*Id.*

⁵Kentucky (Ky. Rev. Stat. Ann. § 147A.027 (2001)); Louisiana (La. Rev. Stat. Ann. § 33:103.1 (2004)); New Jersey (N.J. Stat. Ann. § 40:55D-23.3 (2005) & N.J. Stat. Ann. § 40:55D-23.4 (2005)); New York (S.B. 6316 (N.Y.

II. State-Mandated Training Programs

A. Kentucky

In 2001, Kentucky became the first state to require mandatory comprehensive training for board members.⁶ Pursuant to statute, the planning commissioner and the board of adjustment members of planning units must attend a minimum of four hours of orientation training either one year prior to appointment or within 120 days of appointment and a minimum of eight hours of continuing education courses every two years.⁷ Planning professionals, zoning administrators, administrative officials, and planning professionals' deputies and assistants are also required to undergo a minimum of eight hours of orientation training within the same time period followed by a minimum of 16

hours of continuing education courses every two years.⁸ The training includes, but is not limited to, topics such as: land use planning, zoning, floodplains, transportation, community facilities, ethics, public utilities, wireless telecommunications facilities, parliamentary procedure, public hearing procedure, administrative law, economic development, housing, public buildings, building construction, land subdivision, and powers and duties of the board of adjustment.⁹ Local planning commissions can add topics to be discussed at the sessions as long as the topics are approved in advance by a majority vote of the planning commission.¹⁰ Topics that have been added to the training curriculum by the Kentucky Chapter of the American Planning Association include recreation, airport planning, affordable housing, landscaping, and

2006); South Carolina (S.C. Code Ann. § 6-29-1340 (2003) & S.C. Code Ann. § 6-29-1350 (2003)); Tennessee (Tenn. Code Ann. § 13-4-101 (2002)).

⁶Marshall Slagle, "Kentucky Enacts Continuing Education Requirements for Planning Officials: The Inside Story," Land Use Law and Zoning Digest, September 2001, at 11. (available at <http://www.planning.org/educationcenter/pdf/slagle.pdf> (site visited July 2006)).

⁷Ky. Rev. Stat. Ann. § 147A.027 (2001).

⁸*Id.*

⁹*Id.*

¹⁰*Id.*

smart growth.¹¹ Funding for the training is provided by the local legislative bodies where each planning commission has jurisdiction.¹² Board members are responsible for providing the secretary of the planning commission with a written statement containing the date, the subject matter, the location, the sponsors, and the time spent in each training program, and they are responsible for obtaining written documentation signed by a sponsor representative verifying attendance at the continuing education program.¹³ Failure to comply with any of the requirements means that the person is subject

to removal from office but not dismissal.¹⁴ The Kentucky Chapter of the American Planning Association supported the adoption of the new law, believing that if they were going to have "smart growth" in Kentucky, then they needed "smart people."¹⁵ The statewide builders' association was also a strong supporter of the legislative initiative, recognizing that more informed decisionmakers would provide a better understanding of roles and responsibilities and would level the playing field.¹⁶

B. Tennessee

Tennessee was the second state to require a minimum of

¹¹Telephone Interview with Kevin Costello, President of the Kentucky Chapter of the American Planning Association (July 12, 2006).

¹²Ky. Rev. Stat. Ann. § 147A.027 (2001); When the bill was introduced, cost was an issue, but it was dismissed when people were reassured that there would be cost-effective methods for obtaining training such as borrowing CDs and videotapes from libraries. In addition to CDs and videotapes, there are free workshops, as well as workshops that cost no more than fifteen dollars to attend. The programs are offered by many organizations, including the Kentucky Chapter of the American Planning Association, the American Planning Association, and the Kentucky League of Cities. (Telephone Interview with Kevin Costello, President of the Kentucky Chapter of the American Planning Association (July 12, 2006)).

¹³Ky. Rev. Stat. Ann. § 147A.027 (2001).

¹⁴See Ky. Rev. Stat. Ann. § 100.157 and § 100.217 (2002); telephone interview with Kevin Costello, President, Kentucky Chapter of the American Planning Association (July 12, 2006).

¹⁵Slagle, *supra*, note 7 at 11.

¹⁶*Id.* at 12.

four hours of training and continuing education.¹⁷ Modeled after the Kentucky law, planning commissioners must, within one year of appointment, fulfill the requirements.¹⁸ A full-time or contract professional planner or other administrative official must attend a minimum of eight hours of training and continuing education each calendar year.¹⁹ A professional planner who is a member of the AICP can be exempt if he or she has a current certificate from the AICP Continuing Professional Development Program.²⁰ As in Kentucky, members must provide the secretary of the planning commission with docu-

mentation showing that the requirements were satisfied.²¹

The Tennessee law allows municipalities to opt out of the state requirements by adopting training programs of their own.²² Many municipalities have opted out because they do not want to be bound to the requirements.²³ According to the President of the Tennessee Chapter of the American Planning Association, one problem that has arisen is that planning commissioners, who have held the position for years, refuse to go through the training.²⁴ This is particularly problematic, since there is no true penalty for failing to comply with the requirements.²⁵ While failure to

¹⁷Tenn. Code Ann. § 13-4-101 (2002). (“The subjects for the training and continuing education required by subdivisions (c)(1) and (c)(2) shall include, but not be limited to, the following: land use planning; zoning; flood plain management; transportation; community facilities; ethics; public utilities; wireless telecommunications facilities; parliamentary procedure; public hearing procedure; land use law; natural resources and agricultural land conservation; economic development; housing; public buildings; land subdivision; and powers and duties of the planning commission. Other topics reasonably related to the duties of planning commission members or professional planners or other administrative officials whose duties include advising the planning commission may be approved by majority vote of the planning commission prior to December 31 of the year for which credit is sought.”).

¹⁸Tenn. Code Ann. § 13-4-101 (2002).

¹⁹*Id.*

²⁰*Id.*

²¹*Id.*

²²*Id.*

²³Telephone Interview with Steve Neilson, President of the Tennessee Chapter of the American Planning Association (July 14, 2006).

²⁴*Id.*

satisfy the training requirement is cause for removal, it is not an automatic dismissal.²⁶

In 2004, the Tennessee Department of Economic and Community Development and Local Planning Assistance published a Planning Commissioner Training Handbook as a resource for the required education.²⁷ Although the state has been handling most of the training to date, the Tennessee Chapter of the American Planning Association has been given a grant from the national APA to develop a pilot training program known as the "Smart Growth Tool Box." This program, designed to train facilitators, will be tested in a 10 county area around Nashville prior to a statewide offering. The APA Chapter is training 30 teams, each containing a planner, an architect, and an engineer. These teams will be sent out into the community to train others. The Chapter is also developing a guidebook

which the Tennessee Department of Transportation has helped to fund, and the Chapter is in the process of developing a library where people will be able to borrow videos, DVDs, and other resources to help train their members and to help keep costs down.

C. South Carolina

Required training was adopted for both volunteer board members and professional staff in South Carolina in 2003.²⁸ While the same subject matter is to be covered as outlined in the Kentucky and Tennessee statutes, in South Carolina a board member has between 180 days prior to, and 365 days after, their appointment to attend a minimum of six hours of orientation training in programs that are approved by the South Carolina Planning Education Advisory Committee.²⁹ The training requirements have been phased in. Individuals in local govern-

²⁵*Id.*

²⁶*Id.*

²⁷The Guidebook is available at: <http://www.state.tn.us/ecd/pdf/TPCH.pdf> (site visited July 2006).

²⁸S.C. Code Ann. § 6-29-1340.

²⁹*Id.*; see also S.C. Code Ann. § 6-29-1330 (the State Advisory Committee on Educational Requirements for Local Government Planning or Zoning Officials and Employees consists of five members, appointed by the Governor with the advice and consent of the Senate, who serve a term of four years. The five members consist of a planner recommended by SCAPA, a municipal official recommended by the Municipal Association of South Carolina, a county

ments with populations of more than 35,000 people were required to be in compliance by January 1, 2006. Planning officials in municipalities with populations under 35,000 have until January 1, 2007 to complete the training.³⁰ Thus far, people have been complying with the legislation, and there has been a widespread effort to get them enrolled in courses.³¹

After a member's first year of service, but no later than 365 days after the anniversary of their initial date of appointment, a member is required annually to attend a minimum of three hours of continuing education courses.³² Appointed officials who attended six hours of orientation training for a prior appointment are not required to undergo six hours of training for their subsequent

appointment but they must still attend a minimum of three hours of continuing education courses.³³

Appointed members can be exempt from training and continuing education requirements when: the person is certified by the AICP, has a masters or doctorate degree in planning from an accredited college or university, has a masters or doctorate degree or specialized training or experience in a field related to planning as determined by the advisory committee, or if the person has a license to practice law in South Carolina.³⁴ An appointee, within the first year of employment, must file a certification form with the clerk of the local governing body showing that she should be exempt.³⁵ If any appointed member fails to comply with the require-

official recommended by the South Carolina Association of Counties, a representative recommended by the University of South Carolina's Institute for Public Service and Policy Research, and a representative recommended by Clemson University's Department of Planning and Landscape Architecture. The committee's duties include compiling and distributing a list of approved orientation and continuing education programs that satisfy the educational requirements, as well as determining categories of persons who are eligible for exemption from the educational requirements).

³⁰S.C. Code Ann. § 6-29-1320.

³¹E-mail from Tripp Muldrow, President of the South Carolina Chapter of the American Planning Association to Megan Christian, Research Assistant at the Government Law Center of Albany Law School (July 17, 2006) (on file with the author).

³²S.C. Code Ann. § 6-29-1340.

³³S.C. Code Ann. § 6-29-1350.

³⁴*Id.*

³⁵S.C. Code Ann. § 6-29-1360.

ments for training, or an appointee fails to comply with the filing of forms for exemption, the appointee can be removed, and a professional employee can be suspended or dismissed.³⁶ A sample certification form was developed by the Municipal Association of South Carolina and is available online.³⁷

Training requirements in South Carolina have been met with support from a joint initiative of the Municipal Association of South Carolina, the South Carolina Chapter of the American Planning Association, and the South Carolina Association of Regional Councils, who have partnered to develop a six-hour training curriculum organized into one hour segments and available on DVD.³⁸ Programs are also put on by the South Carolina Association of Counties, which are rebroadcast on South Caro-

lina's ETV's Public Services Network.³⁹

In addition to the six hours of orientation training, members must undergo three hours of continuing education. The South Carolina Planning Education Advisory Committee reviews courses for approval.⁴⁰

D. Louisiana

In Louisiana, mandatory training is required for both the parish and municipal planning commissions and the boards that advise them.⁴¹ Appointed officials must receive at least four hours of training prior to taking office or within one year of assuming office.⁴² The training must cover the duties, responsibilities, ethics, and substance of the positions to be held.⁴³ The Louisiana statute applies only to appointed officials, whereas in other states the statutes apply to both ap-

³⁶§ 6-29-1360.

³⁷See, www.masc.sc/education/certification%20form%20for%20planning%20and%20zoning%20training.pdf (site visited July 2006).

³⁸*Id.*

³⁹E-mail from Tripp Muldrow, *supra*, note 32.

⁴⁰*Id.* (the South Carolina American Planning Association has blanket approval for all of their programs); see also www.sccounties.org (site visited July 2006).

⁴¹La. Rev. Stat. Ann. § 33:103.1 (2004).

⁴²*Id.*

⁴³*Id.*

pointed and current members.⁴⁴ Prior to this law, training for commission members was voluntary.⁴⁵ Planning commissions self-certify their own members, and a lack of training does not mean that a member will be automatically dismissed.⁴⁶

The Louisiana Chapter of the American Planning Association offers planning commissioner training sessions that focus on the following topics: historical overview, legislative authority of the planning commission, role of the planning commission, the comprehen-

sive plan and development control, ethics, emerging issues, and smart growth. Sessions generally end with a discussion about emerging and current issues within Louisiana, such as recent court cases or new types of land uses.⁴⁷ The Louisiana Chapter of the American Planning Association is currently conducting a one-year trial program to underwrite the cost of training, offering the workshops free of charge.⁴⁸

E. New Jersey

In July 2005, New Jersey enacted a law requiring mandatory training for planning and

⁴⁴*Id.*

⁴⁵Telephone Interview with Stephen D. Villavaso, President of the Louisiana Chapter of the American Planning Association (July 12, 2006).

⁴⁶*Id.*

⁴⁷E-mail from Stephen D. Villavaso to Megan Christian, Research Assistant at the Government Law Center of Albany Law School (July 12, 2006) (on file with the author).

⁴⁸The group was given a small grant of \$3,500 from the APA to help offset their costs. When the training sessions take place, trainers are paid \$100 honorarium for one day of training and are also reimbursed for their out of pocket expenses for travel and lodging. Counties are responsible for handling the logistics of the training sessions, such as providing the room, refreshments, and advertising, and letting the Louisiana APA know how many people plan to attend the event. As of right now, the Louisiana APA has not seen private sectors becoming involved in offering training workshops. One challenge that has arisen in Louisiana is a lack of “good” trainers. Currently, the Louisiana APA has six to eight “good” trainers, and they have tried to offer “Train the Trainer’s Programs,” but they have found that it is not easy to get volunteers because of the time commitment and level of knowledge required. The Louisiana APA currently offers training sessions whenever a local planning commission would like one. The organization plans to finish out the year doing training sessions whenever commissions would like, but they are planning on moving towards offering just four sessions per year so that they have a set schedule and trainers will not suffer from burnout. Telephone interview with Stephen D. Villavaso, *supra*, note 46.

zoning board officials.⁴⁹ The Department of Community Affairs has developed draft implementation rules that are expected to become final during the summer of 2006.⁵⁰ Until the rules are finalized, there is no “official” training requirement.⁵¹ Once the rules are published, planning and zoning board members will have 18 months to comply.⁵² Under the New Jersey statute, a member is required to complete a basic land use law training course no longer than five hours in length and capable of being covered in one day.⁵³

The draft rules provide that the training is to offer an overview of the responsibilities of the board members and point

out the differences between the planning and zoning boards.⁵⁴ In addition, the training is to cover municipal master plans and the process of reviewing development applications.⁵⁵

The Center for Government Services of Rutgers University is in the process of putting together a training course, including materials for instructors and a course manual.⁵⁶ In March of 2006, a pilot program was conducted by the Center for Government Services of Rutgers University in Camden County where members of planning and zoning boards participated in a site visit and learned how to read site plans.⁵⁷

New Jersey provides certain exemptions from the requirements. For example, the

⁴⁹N.J. Stat. Ann. § 40:55D-23.3 (2005).

⁵⁰See <http://www.nj.gov/dca/osg/docs/ruleproposal010306.pdf> (site visited July 2006).

⁵¹E-mail from Stuart Meck, Director and Faculty Fellow of the Center for Government Services, Edward J. Bloustein School of Planning and Public Policy, Rutgers, The State University of New Jersey, to Megan Christian, Research Assistant at the Government Law Center of Albany Law School (July 14, 2006) (on file with the author).

⁵²*Id.*

⁵³N.J. Stat. Ann. § 40:55D-23.3 (2005) (the issue still remains whether the Department of Community Affairs will require a multiple choice test upon completion of the training course).

⁵⁴See <http://www.nj.gov/dca/osg/docs/ruleproposal010306.pdf> (site visited July 2006).

⁵⁵*Id.*

⁵⁶E-mail from Stuart Meck, *supra*, note 52.

⁵⁷Volume 10 Conspectus Issue 2 at 2 (Summer 2006) (the program was a success and will serve as a model for future training courses).

mayor or a person who serves in his place when he is absent is exempt.⁵⁸ A member of a governing body serving as a Class III Member is exempt.⁵⁹ A licensed professional planner who maintains a current certificate of license at the time that the course is offered is also exempt.⁶⁰ Finally, a person who offers proof that they took a more extensive course in land use law and planning within 12 months of the date when they would be required to take the training course is exempt.⁶¹

F. New York

In June 2006, both houses of the New York State Legislature passed legislation requiring board members to receive a minimum of four hours of training each year.⁶² As of the time of this writing, the bill has not yet been sent to Governor Pataki for review. Currently, state statutes in New York au-

thorize local legislative bodies, at their option, to require training for members of planning and zoning boards.⁶³ Should Governor Pataki sign the newly passed legislation, effective January 1, 2007, all members of municipal planning and zoning boards will be required to complete four hours of training annually.⁶⁴ To be eligible for reappointment to the applicable board, a member must be in compliance with the law.⁶⁵ Where more than four hours of training is received in a year, the law allows the time over four hours to be carried over to following years.⁶⁶ The law provides that the training program is to be approved by the municipality and may include, but not be limited to, "training provided by a regional or county planning office or commission, county planning federation, state agency, statewide municipal association, college

⁵⁸N.J. Stat. Ann. § 40:55D-23.4 (2005).

⁵⁹*Id.*; see also N.J. Stat. Ann. § 40:55D-23) ("A Class III is a member of the governing body to be appointed by it.").

⁶⁰N.J. Stat. Ann. § 40:55D-23.4 (2005).

⁶¹*Id.*

⁶²S.B. 6316 (N.Y. 2006).

⁶³N.Y. Gen City § 27.1 & § 81.1; N.Y. Town § 267.2 & § 271.1; N.Y. Village § 7-712.2 & § 7-718.1; N.Y. Gen MUN § 239-c.

⁶⁴S.B. 6316 (N.Y. 2006), *supra*, note 63.

⁶⁵*Id.*

⁶⁶*Id.*

or other similar entity.’’⁶⁷ Furthermore, the law provides that the training may be offered in a variety of formats including, but not limited to, electronic media, video, distance learning, and traditional classroom instruction.⁶⁸ The new law mandates the training but allows municipalities to pass a resolution waiving or adjusting the amount of training required when, in the judgment of the local legislative body, it is in their interest to do so.⁶⁹ Lastly, the law provides that no decision of the planning or zoning board will be voided or declared invalid as a result of a failure to comply with the training mandate.⁷⁰

1. Examples of Locally Mandated Training Programs—New York

More than two dozen local governments in New York already have laws in place that require planning and zoning board members to undergo training and complete continuing education courses pursuant

to the existing authorization. This section highlights various locally adopted approaches to training in New York, all of which are easily transferable to jurisdictions in other states.

In the Town of Huntington, appointed planning and zoning board members and members of the board of assessment review must attend a three-hour seminar taught by the Director of Planning, Town Attorney, or Town Assessor, covering topics such as procedure, due process, ethics, and other subjects relevant to the boards’ functions.⁷¹ Upon completion of the training program, members are required to annually attend a pre-approved course, class, workshop, or seminar of at least three hours and then file a document with the Town Clerk’s Office by December 31 of each year showing that she attended the programs.⁷²

In Lyons, members of the joint town and village planning board are required to complete three hours of land use training within twenty four (24) months

⁶⁷*Id.*

⁶⁸*Id.*

⁶⁹*Id.*

⁷⁰*Id.*

⁷¹Town of Huntington, Local Law No. 28-2002.

⁷²*Id.*

of appointment.⁷³ Thereafter, members must complete twelve hours of training during their seven-year term.⁷⁴

The Town of Rochester requires planning board and zoning board members to attend training programs related to the functions of the boards within six months from the date of their appointment.⁷⁵ Thereafter, members must attend a minimum of two continuing education programs annually.⁷⁶ Authorized training programs include those presented by the County Planning Board, the New York Association of Towns, or any other program provided that has been approved by the board's chairman.⁷⁷

The Town of Milan conducts an annual training program and requires board members to attend.⁷⁸ Failure to receive a certificate of completion from

the Town Board results in removal from office.⁷⁹

The Town of Cortlandt requires planning or zoning board members to complete a training course covering the basic skills required to effectively perform the duties of their office, within two years of taking office.⁸⁰

In Shawangunk, planning and zoning board members are required to attend at least one seminar, workshop, or continuing education course during the calendar year.⁸¹ Members must request and receive approval from the Town Board with respect to the seminar, workshop, or continuing education course.⁸² The Town covers the costs of attending the training and reimburses the members for travel and meal expenses related to the training in accord with the policies established by the Town Board. Failure to attend a class during the calendar

⁷³Town of Lyons, Local Law 1-2002.

⁷⁴*Id.*

⁷⁵Town of Rochester, Local Law 3-1999.

⁷⁶*Id.*

⁷⁷Town of Rochester, Local Law 3-1999.

⁷⁸Town of Milan, Local Law 1-1993.

⁷⁹*Id.*

⁸⁰Town of Cortlandt, Local Law 14-1989.

⁸¹Town of Shawangunk, Local Law 4-1995.

⁸²*Id.*

year results in removal from the board. However, where a member is unable to attend a training session, she may apply in advance to the Town Board for relief from the annual requirement if there are no local courses available and the person can show that traveling will cause her an undue hardship.⁸³

The Town of Northhampton requires all members of the Planning Board to attend Town Board approved training programs offered by New York State.⁸⁴ The Town reimburses members for what they determine to be fair and reasonable costs incurred as a result of the training.⁸⁵

In the Town of East Fishkill, Planning Board members must attend, within the first two years of appointment, a training program sponsored by, but not limited to, the New York State Association of Towns, New York State Department of State, New York State Department of Environmental Conservation, Dutchess County Planning Federation,

Westchester County Planning Federation, the New York State Planning Federation, or other appropriate entities.⁸⁶

In Poestenkill, members of the Zoning Board of Appeals are required to attend a minimum of two training sessions within twelve months from the date of appointment and thereafter attend a minimum of three training sessions every three years.⁸⁷ The training sessions must be approved in advance by the Zoning Board of Appeals and will include but not be limited to sessions offered by New York State, other municipalities, governmental associations, educational institutions, or in-house updates or seminars.⁸⁸

In Wheatfield, Planning and Zoning Board members are required to attend a minimum of eight hours of training courses within twelve months from appointment and then attend at least eight hours of training every three years thereafter.⁸⁹ The sessions must be approved in advance by the Wheatfield

⁸³*Id.*

⁸⁴Town of Northhampton, Local Law 2-2000.

⁸⁵*Id.*

⁸⁶Town of East Fishkill, Local Law 2-1993.

⁸⁷Town of Poestenkill, Local Law 1-1999.

⁸⁸*Id.*

⁸⁹Town of Wheatfield, Local Law 6-1993.

Town Board and may include programs offered by New York State, other municipalities, governmental associations, educational institutions, or in-house updates or seminars.⁹⁰ The Chairs of the Zoning Board and Planning Board must notify the Town Board before December 1 each year of any member who has failed to comply with the training requirements.⁹¹ The Town Board then conducts a hearing within fifteen days of written notice to the member to determine whether good cause exists for removal and, if it does, then the person is removed.⁹² The member has the right to be represented by counsel at the hearing at their own expense.⁹³

In Kirkwood, members are required to attend a minimum of six hours of training within the first year of appointment and thereafter annually attend at least three hours.⁹⁴ The sessions must be approved in advance by the Town Board and

can include programs sponsored by the New York State Department of State, the New York State Association of Towns, the New York State Department of Environmental Conservation, the New York State Planning Federation, Broome County Department of Planning and Economic Development, Broome County Cooperative Extension, and other such entities, as well as in-house updates, training seminars, or municipal law seminars conducted by the Town Attorney.⁹⁵

In the Town of Alabama, all members of the Zoning Board and Planning Board are required to complete a minimum of five hours of education within two years from the date of appointment and then annually complete at least two hours of training.⁹⁶ The sessions must be approved in advance by the Town Board.⁹⁷

The Town of Marlborough requires planning and zoning

⁹⁰*Id.*

⁹¹*Id.*

⁹²*Id.*

⁹³*Id.*

⁹⁴Town of Kirkwood, Local Law 4-2001.

⁹⁵*Id.*

⁹⁶Town of Alabama, Local Law 1-1997.

⁹⁷*Id.* (the courses include those from the New York State Department of State, the New York State Association of Towns, the New York State Department of Environmental Conservation, the County Planning Department, and

board members to attend annual training programs from a list of approved programs established by the Town Board and the Planning Board chairperson.⁹⁸ The training requirement may be waived on an individual case-by-case basis for one year upon a showing of good cause for the member's inability to attend the programs, but such a waiver shall not be granted for two consecutive years.⁹⁹

In Dryden, members of the Zoning Board of Appeals must attend all scheduled training and review sessions conducted by the Town Attorney as well as all seminars, workshops, and continuing education courses designated by the Town Board.¹⁰⁰ If a member does not attend at least two sessions by the Town Attorney in one calendar year, then the member may be removed from the board.¹⁰¹ If the member does not attend at least one seminar,

workshop, or continuing education course within two consecutive calendar years, then that member may be removed from the board.¹⁰² The topics covered in the sessions include, but are not limited to: procedures, substantive issues, review of court cases, ethics, conflicts of interest, and such other topics as the Town Attorney shall determine may assist the board in carrying out its functions in a timely, fair, and lawful manner.¹⁰³

The Towns of Clarkstown and Ramapo require that their members complete a training class offered by the Rockland Municipal Planning Federation.¹⁰⁴ In Clarkstown, members have two years from the date of appointment to receive certification, whereas in Ramapo it is only one year.¹⁰⁵ In addition, Ramapo requires members to receive recertification every two years from the date of their initial cer-

the New York State Planning Federation, as well as in house updates and seminars.

⁹⁸Town of Marlborough, Local Law 3-1998 and Local Law 4-2001.

⁹⁹*Id.*

¹⁰⁰Town of Dryden, Local Law 1-1993.

¹⁰¹*Id.*

¹⁰²*Id.*

¹⁰³Town of Dryden, Local Law 1-1993.

¹⁰⁴Town of Clarkstown, Local Law 2-1994 and Town of Ramapo, Local Law 5-1993.

¹⁰⁵Clarkstown Local Law 2-1994.

tification.¹⁰⁶ Furthermore, the Ramapo Town Board has the discretion to grant an extension of no more than one year to a member to receive certification.¹⁰⁷

The Town of Bethany requires its members to attend a minimum of five hours in relevant courses within two years from the date of their appointment and then undergo training every two years thereafter.¹⁰⁸ The training sessions must be approved in advance by the Town Board and can include programs sponsored by the New York State Department of State, New York State Association of Towns, New York State Department of Environmental Conservation, Genesee County Planning Department, and the New York State Planning Federation.¹⁰⁹

In Canaan, members are required to use their best efforts to attend one or more training courses each year offered

through the local community college or any organization offering programs involving land use planning and/or zoning.¹¹⁰

The Town of Watertown requires that an appointee or an existing member complete four hours of approved training and thereafter continue to receive four hours of training each year.¹¹¹ In the event that a person completes more than four hours in a given year, that person may carry over a maximum of four hours for the following year.¹¹² The training must be approved by the Town Board. The Town Board can decide whether to waive the requirement, provided that a member applies in writing for a waiver or modification of the requirements.¹¹³

In the Villages of Farmingdale and Port Jefferson, all members must attend a minimum of six hours of training within one year of being

¹⁰⁶Ramapo, Local Law 5-1993.

¹⁰⁷*Id.*

¹⁰⁸Town of Bethany, Local Law 2-1995.

¹⁰⁹*Id.*

¹¹⁰Town of Canaan, Local Law 2-1995.

¹¹¹Town of Watertown, Local Law 2-2005.

¹¹²*Id.*

¹¹³*Id.*

appointed.¹¹⁴ Thereafter, members must attend a minimum of six hours of training every two years.¹¹⁵ If a member is in the final 12 months of his term, then he is required to attend a minimum of three hours of training.¹¹⁶ In Farmingdale, the training sessions must be approved in advance by the Village Board.¹¹⁷

The Village of Suffern requires its members to attend training programs related to the functioning of said board within two years of the date of their appointment and thereafter attend a minimum of two acceptable training sessions each year.¹¹⁸ Before a member can attend a session, she must provide the Board of Trustees with a description of the session, including the topics to be covered, the speakers, and the anticipated duration of the

sessions.¹¹⁹ The Board of Trustees then consults with the Village Attorney and the Planning and Zoning Board Chairs to determine whether the session is sufficient to satisfy all, a portion of, or none of the required training and continuing education requirements.¹²⁰ The Board of Trustees does grant extensions of time upon a good cause showing from the member as to why she cannot satisfy the requirements on time.¹²¹ The board will not waive the requirements.¹²²

The Village of Fredonia requires that its members have four hours of training each calendar year.¹²³ The Village Board of Trustees has the right to waive any training requirements if a member can show that he already has the necessary experience or knowledge or has shown good cause for being unable to meet the train-

¹¹⁴Village of Farmingdale, Local Law 3-2003 and Village of Port Jefferson, Local Law 9-2000.

¹¹⁵*Id.*

¹¹⁶*Id.*

¹¹⁷Village of Farmingdale, Local Law 3-2003.

¹¹⁸Village of Suffern, Local Law 5-1993.

¹¹⁹*Id.*

¹²⁰*Id.*

¹²¹*Id.*

¹²²*Id.*

¹²³Village of Fredonia, Local Law 8-1999.

ing requirements.¹²⁴ Some approved training courses include those offered by the New York State Department of State, the New York State Conference of Mayors, the New York Planning Federation, and other such entities, as well as in-house updates or seminars.¹²⁵ The Chairperson of the Zoning and Planning Board has to notify the Village Board in writing on or about January 15 of each calendar year of any member who fails to meet the requirements.¹²⁶

The Village of Huntington Bay requires that its members attend a minimum of six hours of training during their first year in office and a minimum of six hours every two years thereafter.¹²⁷

Most of the local laws provide that where a member fails to comply with the requirements within a specified period of time, she may be removed from the board. However, the laws typically provide a “safe harbor” for decisions of the board by providing that failure to obtain the training does not affect the decisions that the person made while serving on the

board. Many of the local laws provide for due process prior to removal (e.g., notice and an opportunity to be heard).

III. Points to Consider When Drafting Training Requirements

Whether it is a state mandated training proposal or one initiated at the local level, the following should be clearly delineated in the legislation:

1) **Who is to be covered by the legislation?** Specifically, lawmakers must consider whether the legislation only covers members of planning and zoning boards/commissions or whether other public sector players in the land use decisionmaking process are included. For example, in some cases professional planners and members of other related boards vested with authority for land use decisions and recommendations may be subject to the requirements. Many jurisdictions allow for the appointment of alternate members of planning and zoning boards, and these individuals should also be required to com-

¹²⁴*Id.*

¹²⁵*Id.*

¹²⁶Village of Fredonia, Local Law 8-1999.

¹²⁷Village of Huntington Bay, Local Law 7-2002.

plete the same training/education as regular board members.

2) What is required in terms of quantity of training? Lawmakers need to consider how many hours of training/education are required for each of the covered positions. The number of hours of initial training should be stated, as well as any requirement for ongoing or continuing education.

3) How long do covered individuals have to complete the training? Laws should be specific in terms of timeframes for completion of initial and ongoing training requirements. Some approaches strive to encourage training in advance of service, and others seek compliance within a reasonable time after appointment. Ongoing training mandates may invoke annual or biannual requirements, or they may coincide with terms of office. Some of the laws allow covered individuals to “stockpile” training hours so that where only four hours are annually required, but eight hours are completed, the member may “save” those extra four hours and apply them towards the next annual requirement. While this may serve as an incentive to engage participation in longer training programs or con-

ferences, it may not advance the goal of making sure that members are “up-to-date” on the most current changes in statutory and case law.

4) What is the content and quality control of the training? Some states have provided a laundry list of potential topics appropriate to satisfy the training requirement. In other cases, it has been left to the local government to determine the content of the training based upon locally assessed educational needs. Where laws are silent as to content, there is a missed opportunity to ensure that people are actually benefiting from new or appropriate information; rather these laws present the risk that people will simply “put in the time” in whatever course is available whether or not the content is beneficial. Quality of both the content and the communication of the content is another important factor to be considered. Some states and localities have specified designated training programs that will satisfy the training requirement, and others leave it open-ended. In a number of cases, statewide and regional municipal and planning associations, as well as academic institutions have stepped in to provide training. In other cases, state agencies have been tasked with develop-

ing and offering appropriate curriculum. Quality control may be linked in some regions to the ability to pay for training, as discussed below.

5) Who pays the cost for training? States typically do not like to impose unfunded mandates on local governments, and local governments are reluctant to require the volunteers they often beg to serve on boards to pay for their own job-related education. Therefore, the cost of the training is typically borne by the public sector. This can be accomplished by government-sponsored training offered at no-cost to participants or by municipalities joining together to offer no-cost training through regional, county, or local planning departments with planning and/or legal staff providing the instruction. Where covered individuals are afforded the freedom to choose other training programs that are reimbursable by the government, a designated person or board is often charged with pre-approving such programs to make certain in advance that the education offered is beneficial, relevant, and appropriate to satisfy the applicable

requirement. One effective method of delivering training in a “convenient” fashion for board members is to require attendance one hour early at the first meeting of the month or the first meeting of every other month and bring the trainer to the meeting so that the board can satisfy their requirements together without travel and major cost to the locality. This training can be taught by the municipal attorney, the municipal planner, an academic, staff from a state agency charged with providing technical assistance and training, or any number of other resources. Some providers have developed on-line training courses to assist board members in completing the training in a more flexible manner.¹²⁸

6) How is it determined whether covered individuals satisfy the requirement? In most cases, the laws provide for self-reporting to a designated government official or board. Some laws neglect to require that covered individuals certify compliance, leaving the likelihood of an unenforceable requirement. Covered individuals could be required to file annual certifications of

¹²⁸For example, the New York Municipal Insurance Reciprocal offers an on-line Zoning School for their member municipalities. See, http://www.nymir.org/zoning_reg.shtml (site visited July 2006).

compliance on a date certain, or they may be required to complete and submit a form for each training session attended within a certain number of days of completion. Governmental entities may not desire to assume responsibility for tracking hours and notifying covered individuals of impending deadlines, preferring the self-certification route.

7) Are any exemptions from training requirements appropriate? Some states provide a statutory exemption for professional planners or others with formal training related to land use decisionmaking. This may not be a good idea, however, since ongoing training provides the opportunity for covered individuals to develop a fluency with the current state of the law, which may have changed since the time of formal academic education.

8) What are the penalties/consequences of non-compliance and what process is due? To be effective, training mandates must specify the consequences of non-compliance. As most of the laws to date cover only volunteer board members, imposing a monetary penalty may not be the most politically appealing option. However, the threat of removal may not be the most

effective method of encouraging compliance, since volunteers may not care if they are removed where failure to comply is necessitated by busy schedules for an often thankless job that requires a significant time commitment. This is the trickiest aspect of crafting a training law, because the consequences need to be real to encourage cooperation with the training goal but not oppressive so that people will refuse to serve on the boards. Training requirements are much easier to enforce on paid staff in that regard. One possible option is to issue a press release at the end of each year recognizing those covered individuals who have completed the training and identifying those who have not. The desire to avoid public attention may be enough to encourage compliance with the mandate.

Where members are to be removed for non-compliance with a training requirement, laws must be specific as to how (and by whom) members will be notified that they have not satisfied their obligation. An opportunity to be heard about the issue should also be permitted. The law may provide that in cases of extenuating circumstances (which may be detailed in the law), such as illness, an extension to com-

plete the training may be requested. Most of the laws to date simply indicate that failure to comply with the requirement may result in removal. Where municipalities/states are serious about the mandate, the laws should be drafted to require removal, and alternate board members may be appointed to temporarily serve until permanent appointments can be made.

IV. Conclusion

With multi-million dollar decisions at the doorstep of volunteer members of planning and zoning boards, and signifi-

cant environmental and public health issues potentially at play, all of which raise the stakes in local decisionmaking, more states and localities should follow the lead of those discussed herein and ensure that decisionmakers are armed with the information needed to make critical legal and policy decisions affecting communities. The municipal insurance industry should take particular note of the value in training programs and offer premium discounts for those municipalities who (voluntarily) put a program in place.